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Spy laws v. the news

An upcoming House hearing on U.S. espionage laws may turn into an inquiry on how the press handles classified information

By James E. Roper

A House subcommittee has decided to hold hearings on the nation's espionage laws, and some members may use the occasion to examine the role of the news media in publishing classified information.

The hearings, tentatively set to begin Sept. 19, will be conducted by the Criminal Justice subcommittee of the House Judiciary Committee, under

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the chairmanship of Rep. John J. Conyers Jr., D-Mich.

The inquiry was provoked mostly by allegations of spying by ex-Navy officer John Walker and his son, Michael. The investigation, however, will go beyond the problem of so-called professional spies.

It will look into the case of Samuel Morison, an analyst at the Naval Intelligence Support Center. Working as a stringer and with his superior's knowledge, he sold classified information to *Jane's Defense Weekly*, including a satellite picture showing damage done by an explosion at Severomorsk, a Soviet naval base near Murmansk on the Kola peninsula. He was indicted last October on criminal charges of violating espionage laws — specifically, unauthorized possession of classified documents, theft and conversion of government property, and transmittal of classified data to a person "not entitled to receive them."

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crets Act of 1911 under which not only the official providing classified information but the newspaper that publishes it can be prosecuted.

A subcommittee source says some members after hearing testimony at the forthcoming hearings may want to use the espionage laws to curb reporting by news media. Other members are described as steadfastly opposed to any such suggestion. Still other members are said to be uncertain about press issues that may arise.

Subcommittee Chairman Conyers, a director of the American Civil Liberties Union, is deemed likely to defend press operations. He intends to invite testimony from representatives of media groups such as the Reporters Committee for Freedom of the Press.

He also will invite testimony from the Reagan Administration and federal security organizations, giving them the opportunity to explain policies toward applying espionage laws to persons who leak classified information to news reporters, or to reporters or newspapers who publish the information.

For more than three months, John Martin, chief of the Internal Security Section of the Criminal Division of the Justice Department, has been un-

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available to a reporter seeking clarification of administration policies toward the espionage laws and the press.

The House Judiciary subcommittee does not have a specific bill to debate, but, according to a subcommittee

source, may prepare one if the testimony produces a consensus on what to do.

Besides Conyers, members are Democrats Don Edwards, Calif.; Barney Frank, Mass.; Howard L. Berman, Calif.; and Frederick C. Boucher, Va.; and Republicans George W. Gekas, Pa.; Patrick L. Swindall, Ga.; and Howard Coble, N.C.

The Morison case has been set for

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trial in U.S. District Court in Baltimore Oct. 8. Already, lawyers for the defendant have lost an attempt to have the indictment dismissed. They argued that the espionage laws were written to prevent transmission of classified material to foreign powers, not the American press. They said the statutes were "impermissibly vague and overbroad" when applied to the leak of classified information from a federal employee to an American news reporter.

U.S. District Judge Joseph H. Young in Baltimore, in refusing to dismiss the indictment, declared March 12: "If Congress had intended this situation to apply only to the classic espionage situation, where the information is leaked to an agent of a foreign and presumably hostile government, then it could have said so by using the words 'transmit...to an agent of a foreign government.'

"In 18 U.S. Code paragraph 749, Congress did precisely that, proscribing the gathering or delivering of

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national defense information to a foreign government or to an agent, employee, subject or citizen thereof. Section 793, on the other hand, proscribes disclosure of national defense information to those 'not entitled to receive it.'

"Finally, the danger to the United States is just as great when this information is released to the press as when it is released to an agent of a foreign government. The fear of releasing this type of information is that it gives other nations information concerning the intelligence gathering capabilities of the United States. That fear is realized whether the information is released to the world at large or whether it is released only to specific spies.

"Defendant claims that by enforcing this statute in the present case involving the release of information to the press, this court would be writing a new law, a task, it is argued, better left to Congress. On the contrary, to read into the statute the requirement that it apply only in 'classic espionage' cases where the disclosure is to an agent of a foreign government would be to ignore the plain language of the law as presently written."

Judge Young acknowledged, "As the defendant properly notes, there has been no definitive court test of the applicability of 18 U.S. Code paragraph 641 (another part of the so-called espionage laws barring theft of government property) to unauthorized disclosure of classified information."

He continued: "Defendant has argued that even if paragraph 641 can be applied to the unauthorized taking of government information in this case, it should not be applied where the taking involves public disclosure in circumstances which implicate First Amendment issues. Defendant argues that in all cases in which paragraph 641 has been applied to the theft of information, the information was being acquired for private, covert use in illegal enterprises..."

"Defendant argues that using paragraph 641 to regulate the disclosure of government information gives executive branch officials unbridled discretion to enforce the statute and thereby control the flow of government information to the public.... Thus, government officials would be free to enforce their own information control policy, and liability may turn on nothing more than the fact that the disclosure embarrasses them or subjects them to public criticism.

"These arguments have little to do with this case. It is most doubtful that Morison was asserting a First Amendment right in selling photographs and documents to Jane's. It is clear that having decided that disclosures of classified information may be prosecuted under paragraph 641, the defendant's motive in disclosing classified information is irrelevant."

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"The difficulty always arises in determining which information is potentially damaging to national security and which is simply embarrassing to the government in power," said the *Post* editorial. "Which whistle blowers do a service by forwarding information to Congress and the press and which — can you think of a single case? — actually put the country in jeopardy? In a society dependent on informed debate, the presumption must be that the work product of the government belongs to the people.

"The exceptions — real military secrets, not, for instance, cost overruns — must be few and far between and covered by carefully crafted statutes. Broad secrecy laws cripple a free society and must be resisted."